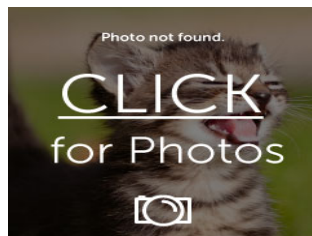


October 26, 2009 (/full-blog/2009/10/do-united-states-food-labeling-laws.html)

## Do the United States' Food Labeling Laws, specifically those regarding Pork, violate International Law? (/full-blog/2009/10/do-united-states-food-labeling-laws.html)

"Food Labeling Laws" (/full-blog?category=%22Food+Labeling+Laws%22), "Livestock" (/full-blog?category=%22Livestock%22), "NAFTA" (/full-blog?category=%22NAFTA%22), "USDA" (/full-blog?category=%22USDA%22), "World Trade Organization" (/full-blog?category=%22World+Trade+Organization%22)



(<http://i624.photobucket.com/albums/tt324/penningc/3pigs.gif>) **The following post was written by staff member Erin Boggs.**

Although the United States and Canada share a border, that border has lately been characterized by a number of trade disputes. In addition to struggles over lumber, the United States recently began full-time enactment of a 2002 law that requires all pork processed in the United States to carry a label identifying its country of origin. *See* Country of Origin Labeling for Fish and Shellfish, 7 C.F.R § 60 ( 2009); Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Macadamia Nuts, Pecans, Peanuts, and Ginseng, 7 C.F.R. § 65 (2009). The law also requires this labeling for a number of other foods, with a few exceptions but the exceptions are an issue for another day. Today we focus on the effect this labeling has on the trade of meat between the United States and other countries, specifically pork, which can be traced to a single country of origin and is ineligible for a "mixed label." Country of Origin Labeling, or "COOL", also requires producers to separate the animals before processing. *See id.* Many U.S. pork producers ship young animals into the country and raise

them in the U.S. for local slaughtering and processing. See Bob Burgdorfer, *New Label Law Shakes Up U.S. Meat Industry*, REUTERS, Apr. 8, 2009, *available at* <http://www.reuters.com/article/rbssFoodProcessing/idUSN0148935020090408?pageNumber=1&virtualBrandChannel=0>. Canada claims that the regulation has severely harmed its hog farming trade, and in protest of the new labeling laws has taken the dispute to the World Trade Organization for settlement. Barbie McKenna, *Canada Turns to WTO Over U.S. Labeling Law*, THE GLOBE AND MAIL, Oct. 9, 2009, *available at* <http://www.theglobeandmail.com/report-on-business/canada-turns-to-wto-over-us-label-law/article1316325/>. The United States, on the other hand, argues that food labeling laws exist to protect consumers and it is a well-settled point of international law that such labels are permissible. See id.

The legality of the U.S. statute is, of course, in question. Advocates claim it will allow consumers to make more informed decisions as they purchase food, and will encourage them to buy food from the United States. Many others, however, see the law as entirely protectionist and claim it violates the North American Free Trade Agreement or "NAFTA". The World Trade Organization or "WTO", in its arbitration, allows countries to enact measures to ensure food safety. These regulations are judged under the Sanitary and Phytosanitary Measures Agreement, or "SPS." Other regulations are measured against the Technical Barriers to Trade Agreement, or "TBT." The regulations at issue most likely fall under the TBT agreement, as SPS does not cover regulations designed to protect consumer interests, such as labeling. See World Trade Organization, *Technical Barriers to Trade – Technical Information*, [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm) (last visited Oct. 22, 2009). The standards set by countries under TBT must be fair and equitable. Additionally, the standards discourage any measure that gives domestic products any unfair advantage. See id. In addition, TBT also prohibits the existence of measures disguised as protection of the consumer interest but whose purpose is actually protection of domestic products. See id. For a regulation to be invalid, the regulation can be more restrictive than necessary for the objective or when the regulation does not achieve a legitimate objective. See id. The U.S. might have a difficult time upholding its regulations under the second prong. The deleterious effect on Canadian pork is severe, and the USDA itself admits that the benefits from the regulation will be small and impact only that small section of consumers who care about the origin of their food. Such facts could lead to an inference of intentional protection of the domestic hog market. While this effect may be counterbalanced by the enormous trade deficit in other affected areas, for now this measure looks suspiciously protectionist.

The implications for the continuation of this law are striking. Canada's pork producers have already seen their exports to the United States fall by 60% as major U.S. pork manufacturers find it prohibitively expensive to import Canadian pork for processing in the United States. McKenna, supra. To comply with the labeling laws, the animals must be segregated by country of origin, which will both increase the price of the meat at market to consumers and cause changes in how the plants operate. See id. The more packers must segregate the meat, the more facility space they will need to keep up, and the more land will be eaten up by large-scale agriculture. The USDA estimates that the new law will require companies to spend \$2.5 billion over the next year in initial costs, while maintenance will cost an additional \$499 million annually. Ching Lee, *Country-of-Origin Food-labeling Rules About to Take Effect*, California Farm Bureau Federation, Sept. 24, 2008, *available at* <http://cfbf.com/agalert/AgAlertStory.cfm?ID=1144&ck=4588E674D3F0FAF985047D4C3F13ED0D#>. U.S. farmers, while relieved of domestic pressure, are concerned about competing with Canadian farmers on an international level. They fear that any decrease in international exports of U.S. pork because of cheaper Canadian pork will not be offset by the reduced imports into the United States. Clifford Krauss, NEW YORK

TIMES, Oct. 12, 2009, *Canadian Hog Industry Seeks Redress on U.S. Food-labeling Law*, Oct. 12, 2009, available at <http://www.nytimes.com/2009/10/13/business/global/13pigs.html>. A number of U.S. farms also raise Canadian or Mexican animals only, and as the top processors phase out their purchases of pork these farms will struggle to compete. Burgdorfer, *supra*. Additionally, if the WTO allows the U.S. law to stand, other countries could follow the United State's lead and force producers to segregate the animals coming into their countries. *Id.* The United States then risks the same problems befalling the Canadian farmers currently, in tandem with rising feed prices and low domestic and export sales. Krauss, *supra*. Granted, if all other countries engage in this segregation and labeling, these actions will level the international playing field. It does so, however, potentially at the expense of consumers, and the question of consumer safety versus consumer happiness is one that each individual legislature must answer. Mexico and Canada already predict a trade war in a market that had been stable, and is now in turmoil. A final question these nations must address is the effectiveness of such food labeling laws, in addition to what actually increases the cost to consumers. Does the segregation cause the problem, or the labeling?

Interestingly, the story seems to change with regard to beef. On Friday, October 17, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America or "R-CALF USA" sent a letter to the USDA vehemently protesting the actions of Canada in challenging the U.S. regulation before the WTO. R-CALF USA claims that Canada has been riding on an extraordinary U.S. trade deficit in which the U.S. imports more than \$1 billion more than it exports. OpEdNews, *Canada, Mexico \$1.3 Billion Short of Claiming COOL Harm Group Tells USDA, USTR*, Oct. 21, 2009, <http://www.opednews.com/articles/Canada-Mexico-1-3-Billio-by-R-CALF-USA-091019-746.html> (last visited Oct. 22, 2009). It seems that even within the U.S. cattlemen and pork producers may be at odds over the new regulations.

Ultimately, regardless of the WTO resolution, the dispute's most costly effects may be those on trade relations in general. Canada and the United States have historically had a notoriously friendly relationship, and continued actions that Canada can label "protectionist" may soon lead to retaliatory action. The larger question may well be whether the United States wants to remain committed to free trade in the food industry. If so, public relations on this issue may not be worth the benefit gained from the food labeling and segregation requirements.

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